IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 29097 of 2005(L)

PETITIONERS:

---

1. FR. JOSE CHELANGARA, MANAGER,
ST. PAUL'S COLLEGE, KALAMASSERY-683 503.

2. V.X. SEBASTIAN, PRINCIPAL,
ST. PAUL'S COLLEGE, KALAMASSERY-683 503.

BY ADV. SRI.BABY ISSAC ILLICKAL

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE UNIVERSITY GRANTS COMMISSION,
REPRESENTED BY ITS SECRETARY,
BAHADUR SHAH ZAFAR MARG, NEW DELHI.

3. MAHATMA GANDHI UNIVERSITY, REPRESENTED
BY ITS REGISTRAR, KOTTAYAM.

R1 GOVERNMENT PLEADER (SHRI T.T. MUHAMMED)
SRI. JOHN VARGHESE, ASSISTANT SG
R3 BY SHRI V.A. MUHAMMED, SC.

THIS WRIT PETITION HAVING BEEN FINALLY HEARD ON 6.12.2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 29097 OF 2005 L

PETITIONERS' EXHIBITS:

EXT.P1 PHOTO COPY OF APPOINTMENT ORDER OF THE 2ND PETITIONER DATED 1.6.2000.

EXT.P2 PHOTO COPY OF APPOINTMENT ORDER OF 2ND PETITIONER DATED 29.3.2001.

EXT.P3 PHOTO COPY OF THE LETTER DATED 24.5.2001 OF THE THIRD RESPONDENT.

EXT.P4 PHOTO COPY OF LETTER DATED 9.7.2001 TO THE THIRD RESPONDENT.

EXT.P5 PHOTO COPY OF THE LETTER DATED 3.8.2001 TO THE FIRST PETITIONER.

EXT.P6 PHOTO COPY OF THE APPOINTMENT ORDER DATED 1.4.2003 OF THE 2ND PETITIONER.

EXT.P7 PHOTO COPY OF JUDGMENT DATED 30.12.2003 IN APPEAL NO.19/99.

EXT.P8 PHOTO COPY OF APPOINTMENT ORDER DATED 1.4.2004 OF THE SECOND RESPONDENT.

EXT.P9 PHOTO COPY OF LETTER DATED 24.9.2004 OF THE THIRD RESPONDENT.

EXT.P10 PHOTO COPY OF LETTER DATED 18.11.2004 TO THE THIRD RESPONDENT.

EXT.P11 PHOTO COPY OF THE REPRESENTATION DATED 17.3.2005 FILED BY SECOND PETITIONER.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C NO. 29097 OF 2005 L

Dated this the 6th December, 2006

JUDGMENT

Petitioners challenge Exts.P3, P5 and P9. They also seek a declaration that sub-sections (3) & (4) of Section 59 of the MG University Act, to the extent it affects the right of first petitioner in appointing any duly qualified teacher of the College as Principal, is unenforceable and void. Second petitioner was appointed as Principal by first petitioner who is the Manager of St. Paul's College, Kalamassery. They claim right under Article 30 of the Constitution of India. In Ext.P9 dated 24.9.2004, three sets of documents are called for, for approving the appointment of the Principal. As regards item No.1, it is the case of petitioners that they have already furnished the said documents. Item No.3 calls for production of Certificate to the effect that no senior teacher has been superseded while making the appointment. Second item mentioned is general seniority list of Sel. Gr. Lecturers of the College as on 1.4.1999.

2. Counsel for petitioners would contend that a minority institution under Article 30 of the Constitution of India is entitled to appoint any person qualified to hold the post of Principal. Apparently, the Certificates and Seniority List mentioned in Ext.P9 have been demanded on the basis of the principle incorporated in Section 59 of the MG University Act. The principle of seniority -cum- fitness shall govern the appointment of Principal. This view was held applicable to minority institutions also by this Court. But, it is not in dispute that the said decision of this Court has been overruled by the Apex Court in its decision dated 27.11.2006. Therein, the Apex Court held that the provision will not be applicable to minority institutions. Counsel for petitioners submitted, however, that the petitioners will make available the common seniority list to the respondent University. I feel that in the light of the Judgment of the Apex Court referred to above, the matter requires reconsideration. Accordingly, Ext.P9 is quashed and the third respondent University is directed to reconsider the matter

bearing in mind the Judgment of the Apex Court in The Secretary, Malankara Syrian Catholic College v. T. Jose & Ors (Dated 27.11.2006) within a period of six weeks from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.